



Inheriting and bequeathing property

You too can benefit from our experience –
start by reading this guide for heirs and
testators.

Every second investment property sold by Walde comes from an inheritance or the early settlement of a deceased person's estate. You too can benefit from our experience – start by reading this guide for heirs and testators. Of course, we are also on hand to provide you with a personal consultation.



A stylized, handwritten signature in black ink that reads "C. Walde".

Claudio F. Walde
CEO



What you should bear in mind

Inheriting property can be a challenging and emotional endeavour. How do you divide a property among heirs? When is an early sale recommended? And how can you prevent conflicts from arising?

If property forms part of your estate, it is advisable to settle the estate in good time by means of appropriate dispositions such as a will or an inheritance or marriage contract – instead of leaving this to the law or the heirs later down the line. But how do you go about it?

Step 1

Clarify your legal position

Who is entitled to inherit what? The first step is to clarify what is within current property and inheritance law. Changing family makeups or so-called patchwork families can create legal uncertainties with regard to inheritance. The sooner you clarify these matters, the better.



Step 2

Estimate the market value

Who receives which share or which property? In order to divide assets fairly, you first need to know their value. You should therefore have all your properties valued – and at a realistic market value, taking into account any need for renovation or extension and investment potential, including the possibility of converting them into apartments and more. Any differences in value can be settled through equalisation payments.

Step 3

Check for tax liabilities

In order to avoid disadvantaging your heirs, you should check what tax consequences your estate might entail. Capital gains tax is generally deferred for inheritance within the immediate family circle and only levied on a later sale. This could, for example, put a single heir who takes over the property at a disadvantage later on.

Step 4

Get talking to your heirs

Do your heirs have the expertise, the time and the desire to look after the property? Is the family closely knit, or might there be disputes? Even if it's not always pleasant: If possible, talk to your heirs. This way – while taking into account any agreements based on property law – you can address the individual needs of all parties and prevent conflicts.

Step 5

Check your inheritance options

How and when could the assets be inherited, and how should they be divided up? Think about different possible scenarios and check your options for dividing them. Can you cater to the individual needs of your heirs, or does it make more sense to sell your property early? If you take the latter option, you could give a cash sum to your heirs during your lifetime or distribute the inheritance fairly in your will – without your heirs having to worry about any of it.



“Consulting a neutral professional is often crucial in finding the best solution for all parties involved.”

Nina Sennhauser
Estate agent

Interview

6



A former notary at Zurich Riesbach, Max Rieser is now an executor, amongst other things. Especially when properties are involved, he advises dealing with an estate at an early stage.

Mr Rieser, do you have a clear conscience?

Yes, why?

Hand on heart: Have you already put your estate in order?

I see. Yes, I still have a clear conscience! I once had my leg pulled with this question, so after that, I sorted everything out immediately.

So you are probably in the minority?

I think so. In Switzerland, billions are bequeathed every year, but only a small proportion of this is regulated by property and inheritance law. Many testators continue to be in denial about the possibility of their own death, so they don't write a will. As a result, alongside a possible handsome fortune, they often leave behind the potential for conflict. This primarily affects assets that are difficult to divide, such as property. And it inevitably leads to differences that need to be settled fairly.

Is a will enough?

No. Firstly, it is important to protect yourself in terms of property and inheritance law so that there are no nasty surprises. Particularly in today's world of changing family makeups and patchwork families, unquestionable cover is essential. This also includes appointing an enduring power of attorney for the worst-case scenario. If your life circumstances change or you enter a new phase of life, I recommend reviewing the arrangements you have made and adjusting them if necessary.

Is it better to do this alone or together with your heirs?

If you involve your partner and children, you can cater to their various needs and wishes and thus prevent inheritance disputes.

“Nasty surprises can be avoided”

Max Rieser, former notary at Zurich Riesbach

In addition, testators and heirs often have little knowledge of options such as usufruct – both before and after inheriting –, the right to sell and share out the proceeds, etc. These options and the respective tax consequences should always be discussed. Many people find such conversations difficult. But you should do it anyway. If it helps, do it with an independent authority such as a notary, lawyer or trustee present.

Ultimately, it is about the decision to bequeath or sell properties beforehand.

Yes. And the decision depends above all on the makeup of heirs – including spouses, children and others – and on whether one property or several are to be passed down, or whether the inheritance can be divided fairly in the interests of all. Where there's a community of heirs, there needs to be unanimity. Experience shows that in many cases, selling is actually a better or, even, the only solution. Ideally, the testator should take charge of finding a solution themselves at an early stage and not leave it to the heirs.

What you need to know as an heir

Communities of heirs are often conflict-laden entities, and reaching a decision together isn't always easy. What should you be aware of?

If properties are inherited, the persons who are entitled to inherit automatically form a community of heirs. A community of heirs is intended as a temporary solution and remains in place until the division of the estate is finalised. However, this can take years. How can conflicts be avoided in the long term ?

8

Know the numbers

As soon as the estate is confirmed, you should estimate the current market value of the property and at the same time calculate the deferred capital gains tax at the relevant tax office. You should also be aware of maintenance costs, renovation requirements and any tax implications. Only then can you decide what to do with the inheritance.

No obligation to divide the estate

Should the property remain in joint ownership? Could it be turned into apartments? If not, will a single heir take over possession of it, or is selling it the best solution? The sooner you explore these issues together, the better.

There is no obligation to divide the estate, and the community can continue for a long time as a so-called continued community of heirs. However, at any time, any heir can request that the estate is divided – and as soon as a member exercises this right, that division must be set in motion.

The principle of unanimity and joint and several liability

In a community of heirs, the principle of unanimity and joint liability apply. Whatever happens to the property requires the consent of all members. An individual cannot take charge of certain parts of the inheritance, but is fully liable with his or her private assets for the entire property. For example, if one of the heirs is unable to meet his or her financial obligations for the property, the others must act as his or her guarantors.

Communities of heirs are volatile entities

Patchwork families, family members scattered around the globe, single people and those with families: they all have very different emotional and financial needs. While one might want steady returns, another prefers capital. Perhaps one party lives in the property and sees no urgent need for things to change. Communities of heirs are at risk of conflict from the outset – and the potential for disputes increases with every change in personnel.

Renovation: an additional risk of conflict

Inherited properties are often a number of decades old and need to be renovated. But there is no money for renovation and not all members have the same financial means at their disposal. One party insists on renovating, while another wants to leave everything as it is for sentimental reasons and benefit from the good returns. It results in a stalemate which, in the worst case, leads to one member requesting that the estate be divided – and when this happens, everyone loses out.

Periodic assessment of positions

In order for a community of heirs to work, it is important to clarify the personal needs of all those involved – also in the long term. If your community of heirs remains in existence for a longer period of time, you should periodically assess members' positions. This will prevent conflicts and ensure that the inherited property does not become the subject of a dispute in the long term.



“Properties often stir up lots of emotions – much more than you might think.”

Nicolas Schnetzer
Head of Zurich North Region

Six facts about communities of heirs

- 1 A community of heirs is intended as a provisional solution.
- 2 But it can take years before the division of an estate is finalised.
- 3 All decisions require unanimity.
- 4 Any heir may request the division of the estate at any time.
- 5 The members of the community of heirs are jointly and severally liable, including with their private assets.
- 6 A community of heirs can change constantly as a result of the deaths of its members and the births of new descendants.

Interview



10

Thanks to his many years of experience, Lawyer Dr Hans-Martin Diener knows the peculiarities and stumbling blocks of communities of heirs.

Dr Diener, why do communities of heirs fall out so often?

Every community consists of different opinions and different needs. This is particularly true of communities of heirs, who tend to have been brought together by fate. These are often highly sensitive and fragile structures in which sensitivities and emotions are running high.

What should I pay particular attention to when it comes to property?

Every community of heirs should aim to divide the estate amicably and quickly, because by law this institution is not intended to last forever. Where that is not possible, clear contractual provisions should be made for the community of heirs.

With properties, there are a number of options: sale, allocation to an heir, division into apartments, continued community of heirs or the formation of a simple partnership. But joint ownership only works as long as the heirs get on well and are in agreement. If new heirs join the estate or the partners of the heirs get involved, things can quickly get complicated. The heirs should be aware of the principle of unanimity, joint and several liability and the possibility that any heir can request the division of the estate at any time. There are a number of further factors that can have far-reaching consequences.

For example?

Tax. If, for example, the community of heirs decides on a conversion or a major renovation or even change the use of the property, it runs the risk of becoming a simple partnership under Art. 530 CO without realising it – and with tax implications. What advice do you give your clients when the community of heirs lasts longer than expected?

“Communities of heirs are not intended to last forever”

Dr Hans-Martin Diener, specialist in inheritance law

Every heir should also settle their own estate promptly. This is because when one heir dies, his or her heirs join the existing community of heirs in turn. This complicates the situation. Every member of a community of heirs should also think about appointing an enduring power of attorney in case they cease to be able to make judgments for themselves. If there is no power of attorney, this can lead to delays and complicate the division of the estate.



“There is only one fair measure for the equitable division of property: market value.”

Mattia Bonasso
CSO and Head of
Limmattal & Aargau Region





Case study

“Everything has its time”

By no means is selling a property always preceded by inheritance disputes. Sometimes the time has simply come to part with a property, regardless of how appealing it may be.

Hans Wüthrich	Vendors of an office
and Beatrice	building once owned
Hediger Wüthrich	by a community of heirs

14



“Everything has its time,” says Hans Wüthrich, representative of a community of heirs that parted with an office building on Kreuzplatz in Zurich in 2019. For over thirty years, this investment property was owned by a community of heirs comprised of Hans, Peter and Rudolf Wüthrich. Even longer in the family. Their father bought the property in the 1970s as the headquarters for Walter Wüthrich AG, the general agency of a large insurance company. Hans Wüthrich, now 75 years old himself, sums it up: “From an entrepreneurial as well as a financial point of view, it was a wise decision by our father to buy this property.

But the effort it requires should not be underestimated, especially as you get older.” Since his father’s death in 1982, he has looked after the property with the exception of the financial management (which was mandated to a trust company). As a kind of “hobby administrator and caretaker”, he says with a wink. From fixing dripping taps to planning and coordinating renovation work. He enjoyed the trust of his brothers. Every quarter, he transferred them their share of the net returns.

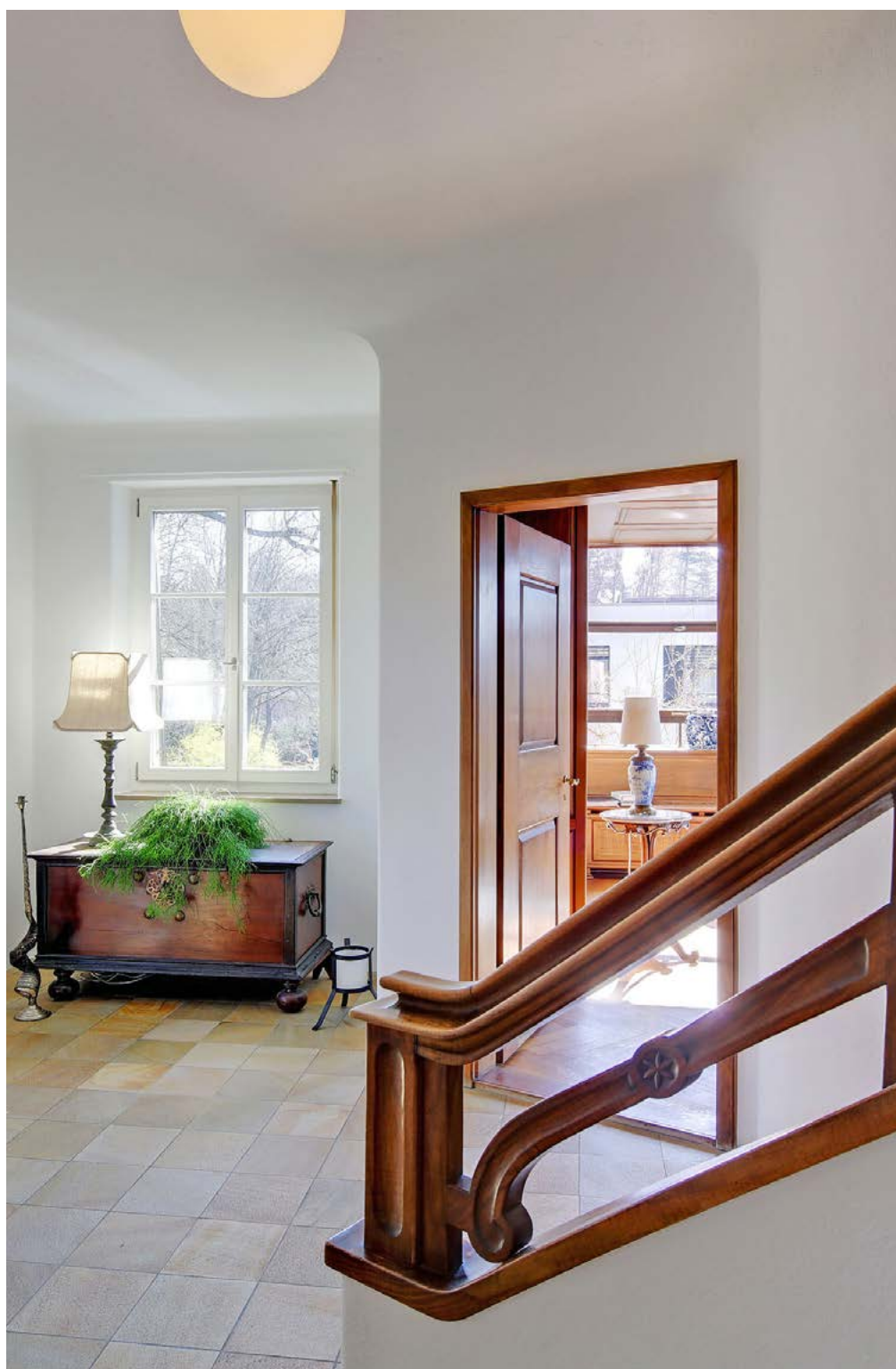
After the sale of the general agency in 2017 and the death of his brother Rudolf in 2018, Hans Wüthrich asked himself for the first time what they should do with the property. “The community of heirs grew, bringing other needs into play. At the same time, no one in the family showed any interest in keeping the building. Not even my children.” Selling it was therefore the obvious choice. This proposal was met with unanimous approval.

The only thing left to do was to get rid of the property in the best possible way for the parties concerned. His answer to the question of why Walde was tasked with the sale is brief: “We contacted two well-known estate agents. Walde clearly hit the mark right across the board. You can sense their experience when it comes to dealing with communities of heirs and professionally marketing investment properties. I can only say they’re the best; there’s probably no better way to sell a property. We’re all very happy.”



“The biggest challenge is taking all parties’ wishes into account.”

Nikola Petrović
Estate agent



Check list: Questions you should ask yourself from time to time.

About yourself

- ☐ Do I have heirs who would be interested in my property?
- ☐ Is a fair distribution of my assets (including property) feasible?
- ☐ Do I have an arrangement in place with regard to property and inheritance law (marriage contract, inheritance contract, will)?
- ☐ Is it up to date?
- ☐ Do I know the tax consequences of dividing an estate?
- ☐ Are all my heirs legally resident in Switzerland?
- ☐ Do all of my heirs have an amicable and good relationship with one other (or is there an “outlier”)?
- ☐ Do I own assets abroad or with a connection to another country?

About your property

- ☐ What is the current market value of the property?
- ☐ Do I know the amount of the deferred capital gains tax?
- ☐ Do I know the property's actual condition ?
- ☐ Are renovations or refurbishment called for?
- ☐ How much capital will that require?
- ☐ Would all heirs be willing and able to share the load of any renovations ?
- ☐ Does the property (with or without refurbishment) have potential in terms of utilisation or rental?
- ☐ Do the heirs want to keep the property jointly or divide it up?

About a possible sale

- ☐ What would be the estimated net proceeds from a sale (after deduction of the sales costs and capital gains tax)?
- ☐ Do current market conditions speak in favour of or against selling?

17



“Selling properties from an estate requires a great deal of psychological skill.”

Ramona Ruh
Head of Investment Properties



Our team has already helped many people find their ideal home. You, too, can benefit from our experience.

Get in touch.

19

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